

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

GEORGE ELVIE GADDIS, No. CIV S-04-0181-MCE-CMK-P

Plaintiff,

VS.

## FINDINGS AND RECOMMENDATIONS

CALIFORNIA MEDICAL  
FACILITY, et al.,

## Defendants.

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18 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil  
19 rights action pursuant to 42 U.S.C. § 1983. On April 13, 2005, the court granted plaintiff's  
20 application for leave to proceed in forma pauperis and directed plaintiff to submit completed  
21 forms within 30 days for service of his complaint without pre-payment of costs by the U.S.  
22 Marshal. Plaintiff failed to comply and, on September 22, 2005, the court directed plaintiff to  
23 show cause in writing within 20 days why this action should not be dismissed for lack of  
24 prosecution and failure to comply with court rules and orders. Plaintiff has not responded to the  
25 order to show cause.

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1 The court must weigh five factors before imposing the harsh sanction of dismissal.

2 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal  
3 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in  
4 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of  
5 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;  
6 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,  
7 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate  
8 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,  
9 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where  
10 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.  
11 1986). Dismissal has also been held to be an appropriate sanction for failure to follow local rules.  
12 See Ghazali, 46 F.3d at 53.

13 Having considered these factors, and in light of plaintiff's failure to comply with  
14 court orders or to respond to the court's order to show cause, the court finds that dismissal is  
15 appropriate.

16 Based on the foregoing, the undersigned recommends that this action be dismissed.

17 These findings and recommendations are submitted to the United States District  
18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days  
19 after being served with these findings and recommendations, any party may file written objections  
20 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
21 and Recommendations." Failure to file objections within the specified time may waive the right  
22 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: October 20, 2005.

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26 CRAIG M. KELLISON  
UNITED STATES MAGISTRATE JUDGE

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